

SEMINOLE COUNTY GOVERNMENT AGENDA MEMORANDUM

SUBJECT: Resolution - Locally Funded Agreement - Memorandum of Agreement for the State Road 436/Red Bug Lake Road Interchange Project from Lake Howell Road to Wilshire Boulevard (Financial Management Number 419369-1-(4B, 41, 43 & 45)-01

DEPARTMENT: Public Works

DIVISION: Engineering

AUTHORIZED BY: Gary Johnson

CONTACT: Brett Blackadar, P.E.

EXT: 5707

MOTION/RECOMMENDATION:

Adopt a Resolution and authorize the Chairman to execute a Locally Funded Agreement with the Florida Department of Transportation (FDOT) for the acquisition of right-of-way for the State Road 436/Red Bug Lake Road Interchange Project from Lake Howell Road to Wilshire Boulevard.

Approve and authorize the Chairman to execute a Memorandum of Agreement with the Florida Department of Transportation and the State of Florida Department of Financial Services, Division of Treasury, to establish an interest-bearing escrow account to provide funds for work performed on the project.

Authorize issuance of a check in the amount of \$7,000,000 from funds in the County's 2007/2008 Fiscal Year Budget to be paid to the Florida Department of Transportation by November 1, 2007.

Authorize issuance of a check in the amount of \$16,435,000 from funds in the County's 2008/2009 Fiscal Year Budget to be paid to the Florida Department of Transportation by November 1, 2008.

District 1 Bob Dallari
District 2 Michael McLean
District 4 Carlton D. Henley

Jerry McCollum, P.E., County Engineer

BACKGROUND:

Under the 2nd Generation (2001) Sales Tax Program, the County administers and funds certain State road projects (State Road 434 and the Red Bug Lake Road/State Road 436 Interchange) from design through construction, with the agreement that the Florida Department of Transportation (FDOT) acquires right-of-way. As part of the 2nd Generation Sales Tax Program, the intersection of State Road 436 and Red Bug Lake Road was identified for a major transportation improvement. At the April 26, 2005, Board of County Commissioners hearing, the Board adopted the recommended design alternative for the proposed improvement at this intersection. Subsequently, the County's consultant completed the Project Development and Environment (PD&E) study and obtained approval from the Federal Highway Administration and FDOT. The project is now in final design, which will be completed in March of 2008.

At this time, Seminole County has \$7,500,000 budgeted in Fiscal Year (FY) 2006/2007 to fund advanced acquisitions of property for this project through approximately mid-November (Capital Improvement Project # 00226301). The balance remaining after those advanced acquisitions would carry forward to supplement right-of-way funds programmed in future fiscal years for this project. In the upcoming two Fiscal Years, a total of \$23,300,000 is programmed for right-of-way needs subsequent to the acquisitions currently in process (\$7,000,000 in FY 2007/2008 and \$16,300,000 in FY 2008/2009).

In order to facilitate the right-of-way acquisition, FDOT is amending their approved Work Program in order to receive lump-sum transfers from Seminole County so that right-of-way purchases can be administered directly by FDOT through the attached Locally Funded Agreement (LFA). Under the attached LFA, the County will provide FDOT with \$7,000,000 in the County's FY 2007/2008 and \$16,435,000 in the County's FY 2008/2009.

Once the LFA and the Work Program amendment are both in place, FDOT will be responsible for directly acquiring the necessary right-of-way to construct this project using the funds transferred to them through this agreement. As on other State road projects, the County will be responsible for any acquisition costs over the total right-of-way fund estimates contained in this agreement.

STAFF RECOMMENDATION:

Staff recommends the Board adopt a Resolution and authorize the Chairman to execute a Locally Funded Agreement with the Florida Department of Transportation (FDOT) for the acquisition of right-of-way for the State Road 436/Red Bug Lake Road Interchange Project from Lake Howell Road to Wilshire Boulevard.

Approve and authorize the Chairman to execute a Memorandum of Agreement with the Florida Department of Transportation and the State of Florida Department of Financial Services, Division of Treasury, to establish an interest-bearing escrow account to provide funds for work performed on the project.

Authorize issuance of a check in the amount of \$7,000,000 from funds in the County's 2007/2008 Fiscal Year Budget to be paid to the Florida Department of Transportation by November 1, 2007.

Authorize issuance of a check in the amount of \$16,435,000 from funds in the County's 2008/2009 Fiscal Year Budget to be paid to the Florida Department of Transportation by November 1, 2008.

ATTACHMENTS:

1. Location Map
2. Resolution
3. Locally Funded Agreement SR 436-RBLR Interchange2
4. Memorandum of Agreement-SR 436-RBLR Interchange2

Additionally Reviewed By:

- ☒ Budget Review (Fredrik Coulter, Lisa Spriggs)
- ☒ County Attorney Review (Matthew Minter)

SR 436 @ RED BUG LAKE ROAD INTERCHANGE
CIP # 00226301

SR 436

WILSHIRE DR

S WINTER PARK DR

EAGLE CIRCLE

RED BUG LAKE ROAD

**LAKE
HOWELL RD**



1 inch equals 1,000 ft

RESOLUTION

**THE FOLLOWING RESOLUTION WAS ADOPTED AT THE
REGULAR MEETING OF THE BOARD OF COUNTY
COMMISSIONERS OF SEMINOLE COUNTY, FLORIDA, ON
THE 25th DAY OF SEPTEMBER, 2007.**

WHEREAS, the State of Florida Department of Transportation and Seminole County desire to facilitate the acquisition of right-of-way for the State Road 436/Red Bug Lake Road Interchange Project from Lake Howell Branch Road to Wilshire Boulevard beginning in Fiscal Year 2007/2008; and

WHEREAS, The State of Florida Department of Transportation has requested Seminole County to execute and deliver to the State of Florida Department of Transportation a Locally Funded Agreement and a Memorandum of Agreement for the aforementioned project, (FDOT Financial Management Number 419369-1-(4B, 41, 43 & 45)-01.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Seminole County, Florida, that the Chairman is hereby authorized to make, execute and deliver to the State of Florida Department of Transportation the Locally Funded Agreement and a Memorandum of Agreement for the aforementioned project, (FDOT Financial Management Number 419369-1-(4B, 41, 43 & 45)-01.

ADOPTED THIS 25th DAY OF SEPTEMBER, 2007.

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY**

**MARYANNE MORSE, Clerk to the
Board of County Commissioners in
and for Seminole County, Florida.**

Carlton D. Henley, Chairman

Financial Project No: 419369-1-(4B, 41, 43 & 45)-01 County CIP No.: 2263-01 SR 436/Red Bug Lake Road Project	Fund: LF	Agency: Seminole County Vendor No.: F596000856-065
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**LOCALLY FUNDED AGREEMENT
BETWEEN
THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
SEMINOLE COUNTY**

This **AGREEMENT**, made and entered into this ____ day of _____, 2007, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (hereinafter referred to as the DEPARTMENT) and SEMINOLE COUNTY, a Charter County and a political subdivision of the State of Florida (hereinafter referred to as the COUNTY),

WITNESSETH:

WHEREAS, the Parties have been granted specific legislative authority to enter into this Agreement pursuant to Section 339.12, Florida Statutes; and

WHEREAS, the COUNTY, by Resolution, a copy attached hereto as Exhibit "C," has accepted said grant and authorized its officers to execute this Agreement on its behalf.

WHEREAS, the Project is not revenue producing and is contained in the Adopted Five Year Work Program; and

WHEREAS, the DEPARTMENT is prepared, in accordance with its Adopted Five Year Work Program, to undertake the Project described as, Acquisition of Right of Way for SR 436/Red Bug Lake Road from Lake Howell Road to Wilshire Boulevard in Seminole County, beginning in Fiscal Year 2007/2008, said Project being known as Financial Management Number 419369-1-(4B, 41, 43 & 45)-01, hereinafter referred to as the "Project"; and

WHEREAS, the implementation of the Project is in the interests of both the DEPARTMENT and the COUNTY and it would be most practical, expeditious, and economical for the COUNTY to provide the funds for the acquisition phases of the Project;

NOW, THEREFORE, in consideration of the mutual benefits to be derived from the joint participation of this Agreement, the parties agree as follows:

1. The term of this Agreement shall begin upon the date of signature of the last party to sign and shall remain in full force and effect through completion of all services required of the

COUNTY. The DEPARTMENT may, at any time and at any stage, amend or terminate the Project in whole or in part if the DEPARTMENT determines that such action is in the best interests of the public.

2. The DEPARTMENT shall be responsible to acquire, clear and certify the Right-of-Way necessary to construct the Project for the SR 436/Red Bug Lake Road Project from Lake Howell Road to Wilshire Boulevard. The Department shall acquire title to all real property necessary for the Project in the name of the State of Florida Department of Transportation. The necessary Right-of-Way shall be defined by the Design Plans and Right-of-Way Maps.

3. Nothing herein shall be construed as requiring the DEPARTMENT to perform any activity which is outside the scope of the Project as previously defined. Except as specifically stated otherwise in this Agreement, all such activities shall be performed by such entities, at such times, in such manner, under such conditions, and pursuant to such standards as the DEPARTMENT, in its sole discretion, deems appropriate. The COUNTY shall not have any jurisdiction or control over the DEPARTMENT's activities, except as specifically stated in this Agreement. The COUNTY shall be entitled to be advised of the progress of the Project at reasonable intervals upon request. After construction is complete the DEPARTMENT shall convey, in Fee Simple, the parcels acquired off of the State Highway System for the Red Bug Lake Road Improvements herein to the COUNTY reserving unto the DEPARTMENT any necessary drainage easements within these parcels.

4. Participation by the COUNTY and the DEPARTMENT of the funds for the acquisition phases of the Project shall be made as follows:

(A) The current estimated cost for fiscal years 2007/2008 and 2008/2009 for the acquisition of the Project is \$23,435,000.00 (Twenty Three Million Four Hundred Thirty Five Thousand Dollars and No/100). The COUNTY agrees to bear all expenses of the total cost of the Project.

(B) The COUNTY agrees to provide the DEPARTMENT an advance deposit, in the amount of **\$23,435,000.00 (Twenty Three Million Four Hundred Thirty Five Thousand Dollars and No/100)**. The COUNTY agrees to provide the funding according to the following schedule: **\$7,000,000.00 (Seven Million Dollars and No/100)** will be due and payable by November 1, 2007 and **\$16,435,000.00 (Sixteen Million Four Hundred Thirty Five Dollars and No/100)** will be due and payable no later than November 1, 2008. The advance deposit may be used on any phase of the Project.

(D) Both parties further agree that in the event the right of way is not acquired, or the Agreement is terminated prior to commencement of acquisition of the Project, the funds provided by the COUNTY for the Project will be returned to the COUNTY.

(E) If the actual acquisition costs are in excess of the advance deposit, the COUNTY will provide an additional deposit within fourteen (14) calendar days of notification from the DEPARTMENT so that the total deposit is adequate to ensure that cash on deposit with the DEPARTMENT is sufficient to fully fund the Project. The DEPARTMENT will notify the COUNTY as soon as it becomes apparent the actual acquisition costs are in excess of the advance deposit amount; however, failure of the DEPARTMENT to so notify the COUNTY shall not relieve the COUNTY from its obligation to pay for its full participation on final accounting as provided herein below. If the COUNTY cannot provide the additional deposit within fourteen (14) days, a letter must be submitted to the DEPARTMENT'S Project Manager indicating when the deposit will be made. The COUNTY understands the request and approval of the additional time could delay the Project, and additional costs may be incurred due to delay of the Project.

(F) Should Project modifications or changes occur that increase the total Project costs, the COUNTY will be notified by the DEPARTMENT accordingly. The COUNTY agrees to provide, without delay, in advance of the additional work being performed, adequate funds to ensure that cash on deposit with the DEPARTMENT is sufficient to fully fund the Project. The DEPARTMENT shall notify the COUNTY as soon as it becomes apparent the actual costs will overrun the estimated amount; however, failure of the DEPARTMENT to so notify the COUNTY shall not relieve the COUNTY from its obligation to pay for its full participation during the Project and on final accounting as provided herein below.

(G) The DEPARTMENT intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three hundred sixty days (360) of final payment for land acquisition. The DEPARTMENT considers the Project complete when the final payment has been made. All Project cost records and accounts shall be subject to audit by a representative of the COUNTY for a period of three (3) years after final close out of the Project. The COUNTY will be notified of the final cost. Both parties agree that in the event the final accounting of total Project costs pursuant to the terms of this Agreement is less than the total deposits to date, a refund of the excess deposit will be made

by the DEPARTMENT to the COUNTY. If the final accounting is not performed within three hundred and sixty (360) days, the COUNTY is not relieved from its obligation to pay.

(H) In the event the final accounting of total Project costs is greater than the total deposits, the COUNTY will pay the additional amount within forty (40) calendar days from the date of the invoice from the DEPARTMENT. The COUNTY agrees to pay interest at a rate as established pursuant to Section 55.03, Florida Statutes, on any invoice not paid within forty (40) calendar days until the invoice is paid.

(I) The payment of funds under this Locally Funded Agreement will be made directly to the DEPARTMENT for deposit and as provided in the attached MOA between the COUNTY, the Department and the State of Florida, Department of Financial Services, Division of Treasury. All interest earned will remain in the account for purposes of the Project.

(J) The DEPARTMENT and the COUNTY agree that the payment shall be an asset of the DEPARTMENT for the cost of the work.

(K) Contact Persons:

Florida Department of Transportation

Shirley Matthews	Todd Long
JPA Coordinator/MS 4-522	Project Manager/MS 542
719 South Woodland Boulevard	719 South Woodland Boulevard
DeLand, Florida 32720-6834	DeLand, Florida 32720-6834
PH: (386) 943-5452	PH: (386) 943-5492
shirley.matthews@dot.state.fl.us	todd.long@dot.state.fl.us

Seminole County

Brett Blackadar, P.E.
Seminole County
520 West Lake Mary Boulevard
Suite 200
Sanford, Florida 32773
(407) 665-5702
BBlackadar@seminolecountyfl.gov

5. All tracings, plans, specifications, maps, models, reports, or other work product prepared or obtained under this Agreement shall be considered works made for hire for the DEPARTMENT and shall at all times be and remain the property of the DEPARTMENT without restriction or limitation on their use. The COUNTY may, however, inspect those materials upon providing reasonable advance notice to the DEPARTMENT.

6. After written notice and a reasonable opportunity to cure, either party may unilaterally cancel this Agreement for refusal by the other party to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes and made or received by such party in conjunction with this Agreement.

7. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof, and incorporates and includes all proper negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein. The parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written.

8. This Agreement shall be governed by the interpreted in accordance with the laws of the State of Florida. Any provision herein determined by a court of competent jurisdiction, or any other legally constituted body have jurisdiction, to be invalid or unenforceable shall be severable and the remainder of this Agreement shall remain in full force and effect, provided that the invalidated or unenforceable provision is not material to the intended operation of this Agreement.

IN WITNESS WHEREOF, the **COUNTY** has executed this Agreement this ____ day
of _____, 2007, and the **DEPARTMENT** has executed this Agreement
this ____ day of _____, 2007.

SEMINOLE COUNTY, FLORIDA
By: BOARD OF COUNTY COMMISSIONERS

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By: _____
Name: Carlton Henley
Title: Chairman - BOCC

By: _____
Name: George S. Lovett
Title: Director of Transportation Development

Date: _____

Date: _____

Attest:

Attest:

Maryanne Morse
Clerk to the Board of County Commissioners
of Seminole County Florida

Executive Secretary

For use and reliance of Seminole
County only. Approved as to form
and legal sufficiency.

Legal Review:

Legal Review:

Seminole County Attorney

Financial Provision Approval by
Department of Comptroller on:

Exhibit “A”

SCOPE OF SERVICES

Right of Way Acquisition

Financial Management Number: 419369-1-(41, 4B, 43 & 45)-01

Seminole County is funding the design, right of way acquisition, and construction phases of the SR 436/Red Bug Lake Road Project from Lake Howell Road to Wilshire Boulevard. Seminole County is currently administering the design phase of the project, including the preparation of the Right of Way Control Maps and Right of Way Maps, and the County will be administering the construction phase of the project, potentially beginning in Fiscal Year 2011. In order for the County to meet all federal requirements and be eligible for obtaining federal funds if they become available, the right of way acquisition phase must be performed in accordance with federal requirements. Since the County does not have the resources to perform this phase of the project, the Department has committed to performing the right of way acquisition phase for Seminole County using County funds.

This LFA is for the transfer of local funds from Seminole County in the Department's fiscal years 2007/2008 and 2008/2009 which is programmed in the Department's Work Program, so that the Department's Right of Way staff can perform the right of way acquisition phase for the County. The specific parcel numbers and acquisition areas will be defined as the Right of Way Mapping phase is completed over the next year.

Exhibit “B”
Local Fund Payment Schedule

Funds Due from the County by November 1, 2007\$ 7,000,000

Funds Due from the County by November 1, 2008\$16,435,000

TOTAL \$23,435,000

Exhibit “C”

RESOLUTION/MINUTES

Financial Management Number: 419369-1-(4B, 41, 43, 45)-01

MEMORANDUM OF AGREEMENT

THIS AGREEMENT, made and entered into this _____, day of _____, 2007, by and between the State of Florida, Department of Transportation, hereinafter referred to as "FDOT" and the State of Florida, Department of Financial Services, Division of Treasury and Seminole County referred to as the "County".

WITNESSETH

WHEREAS, "FDOT" will be acquiring Right-of-Way the following project:
Main Financial Project Number: 419369-1-43-01
County: Seminole County
hereinafter referred to as the "Project".

WHEREAS, FDOT and the County entered into a **Locally Funded Agreement** dated _____, 2007, wherein DOT agreed to perform certain work on behalf of the County in conjunction with the Project.

WHEREAS, the parties to this AGREEMENT mutually agreed that it would be in the best interest of the FDOT and the County to establish an interest bearing escrow account to provide funds for the work performed on the Project on behalf of the County by the FDOT.

NOW THEREFORE, in consideration of the premises and the covenants contained herein, the parties agree to the following:

1. An initial deposit in the amount of **\$7,000,000.00 (Seven Million Dollars and No/100)** will be made by the County into an interest bearing escrow account established by the DEPARTMENT for the purposes of the project. The remaining deposit from the COUNTY in the amount of **\$16,435,000.00 (Sixteen Million Four Hundred Thirty Five Thousand Dollars and No/100)** is due and payable to the DEPARTMENT no later than November 1, 2008. Said escrow account will be opened with the Department of Financial Services, Division of Treasury, Bureau of Collateral Management on behalf of the FDOT upon receipt of this Memorandum of Agreement. Such account will be an asset of FDOT.

2. Other deposits will be made only by the County as necessary to cover the cost of additional work prior to the execution of any Supplemental Agreements or Amendments.

3. All deposits shall be made payable to the Department of Financial Services, Revenue Processing and mailed to the FDOT Office of Comptroller for appropriate processing at the following address:

Florida Department of Transportation
Office of Comptroller
ATTN: LFA Section
Mail Station 42B
605 Suwannee Street
Tallahassee, Florida 32399

4. The FDOT's Comptroller or designee shall be the sole signatories on the escrow account with the Department of Financial Services and shall have sole authority to authorize withdrawals from said account.

5. Unless instructed otherwise by the parties hereto, all interest accumulated in the escrow account shall remain in the account for the purposes of the project as defined in the LFA.

6. The Department of Financial Services agrees to provide written confirmation of receipt of funds to the FDOT.

7. The Department of Financial Services further agrees to provide periodic reports to the FDOT.

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION
COMPTROLLER

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY

Carlton D. Henley, Chairmen

Date: _____

STATE OF FLORIDA
DEPARTMENT OF FINANCIAL SERVICES,
DIVISION OF TREASURY

As authorized for execution by the Board
of Commissioners at their _____,
2007 regular meeting.

Attest:

MARYANNE MORSE, Clerk to the Board
of County Commissioners in and for
Seminole County, Florida.

For use and Reliance of Seminole County Only.
Approved as to Legal Form and Sufficiency.

County Attorney

520 West Lake Mary Boulevard, Suite 200
Sanford, Florida 32773

PARTICIPANT ADDRESS

F596000856-065

FEDERAL EMPLOYER I.D. NUMBER